

WEBINAR WEDNESDAYS



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International Extraditions

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U.S. – MEXICO EXTRADITION PROTOCOL
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The extradition process with a foreign country is a matter of federal law, governed by international treaties. With regard to Mexico, the U.S.-Mexico Extradition Treaty (1978) provides the protocol and procedure for extradition between the two countries. The U.S. Department of Justice/Office of International Affairs (OIA) and the Mexican Federal Attorney General (FGR) are the designated Central Authorities pursuant to the Treaty. Therefore, all matters related to international extradition must be carried out in consultation with, and processed through, OIA. In order to facilitate the return of fugitives from Mexico, our office has developed and implemented a protocol which is summarized below:

Requesting a Provisional Arrest Request (PAR) in Mexico:

I will prepare a Provisional Arrest Request (PAR) and formal extradition package if a defendant is suspected to have fled to Mexico. A PAR provides the asylum country (where the fugitive has taken refuge) legal authority to arrest the fugitive in the foreign country.

Formal Extradition Package. Due to recent protocol changes at USDOJ/OIA, we are now required to submit fully executed (signed) formal extradition packages to OIA **prior to** the issuance of a PAR (and a PAR is rarely being executed now). A package must be reviewed and approved by OIA prior to signature before a Judge in Maricopa. The benefit of submitting a fully-executed and translated extradition package up front with the PAR request is that we are not subject to strict deadlines to formalize and translate the extradition package once the fugitive is arrested in Mexico on the PAR.

Urgent PARs. An urgent request for a PAR (without submitting a fully executed package) is reserved only for cases where there are *exigent circumstances* and it is subject to review and approval by USDOJ. In this situation, OIA will accept *draft* affidavits/declarations. Once the fugitive is arrested on the PAR, OIA will require revisions to the previously submitted draft affidavits within 10-15 days of the arrest. At this time, OIA is not accepting drafts and will require a fully executed package before issuing a PAR.

In both situations noted above, after the formal extradition package is completed and approved by OIA, the package is then forwarded to the U.S. Department of State (USDOS) who then sends the request to the USDOS Legal Attache, the Mexican Department of State ("SRE") and the Mexican Attorney General's

Office ("FGR") in Mexico City for review and approval. Once the package is approved by the Mexican agencies noted above, the FGR presents the PAR request to a federal court/extradition judge in Mexico City. If the PAR is approved, the Mexican federal court issues the PAR. This process can take 6 months to a year.

Contents of the Extradition Package. The formal extradition package/Provisional Arrest Request (PAR) request consists of affidavits from the following: (1) prosecutor; (2) detective; and (3) declarations from percipient witnesses who can identify the defendant. The package will also include supporting documentation including, the charging document, the arrest warrant, applicable statutes, forensic reports and crime scene photographs. Special care should be taken to accurately draft affidavits and declarations as these are discoverable to defense once post-extradition.

Rule of Specialty. Of important note, the Rule of Specialty provides that the requesting state can only prosecute the fugitive for the charges which were requested and granted by the foreign government. Amendments to the charging document **cannot** be made post-extradition. Thus, the assigned trial prosecutor should conduct a thorough review of the case to ensure that the charging document includes all provable charges and allegations to avoid being precluded from prosecuting warranted charges pursuant to the Rule of Specialty.

Locating & Arresting the Fugitive in Mexico:

FBI and USMS have offices at the U.S. Embassy in Mexico City to provide support to Mexican federal law enforcement in the apprehension of U.S. fugitives. The Mexican federal law enforcement agency, however, makes the arrest on PARs since American law enforcement agents are not allowed to make arrests in Mexico on PARs.

Once the fugitive is arrested, he or she is flown to Mexico City by Mexican law enforcement officers to begin formal extradition proceedings. If the investigating agency wants to interview a fugitive arrested in Mexico pursuant to a PAR, a formal request must be made to the Government of Mexico pursuant to the U.S. - Mexico Mutual Legal Assistance Treaty (MLAT). Interviews conducted on Mexican soil, without prior permission from the Mexican federal government through USDOJ/OIA, may jeopardize the extradition on the current case and future cases.

Formal Extradition Proceedings in Mexico:

Once the formal extradition package is presented to the Mexican federal court and the fugitive in Mexico, the fugitive can either waive or contest extradition. The most efficient scenario is when the fugitive waives extradition. When the fugitive waives extradition, his/her return to Maricopa County can be accomplished as early as 6 months to one year after the fugitive is arrested in Mexico. If the fugitive contests extradition and hires a lawyer in Mexico, the appeals process can take 1-2 years, or longer, before a final decision of extradition is made by the Mexican federal court and the SRE (Secretariat of Foreign Affairs – the government department responsible for Mexico's foreign affairs).

After the Mexican federal court makes its final decision of extradition, the SRE prepares the "Acuerdo" (the Agreement) outlining the court's decision and SRE's concurrence in the extradition decision. The Acuerdo also indicates the charges for which extradition was granted and for which we can prosecute the fugitive. The SRE then makes the fugitive available to INTERPOL/Mexico City who will, in turn, notify the USMS or FBI to make transportation arrangements.

Media Releases/Comments. OIA strongly advises that media releases or comments should be avoided during the pendency of the extradition proceedings in Mexico and return of the fugitive to the United States. Media comments can delay or jeopardize the extradition of the fugitive and create unnecessary law enforcement officer safety concerns.

Transportation of the Fugitive to the United States:

INTERPOL/Mexico City notifies either the USMS or FBI and turns over the fugitive to one of these federal agencies for transport back to the U.S. There is a lot of red tape and maneuvering in order to accomplish the transport of the fugitive back to the U.S., especially when the fugitive lacks legal status in the U.S. The USMS and FBI work with OIA to make travel arrangements through DHS/ICE.

The USMS or FBI transports fugitives back to the United States. If the fugitive has not arrived at an Arizona Port of Entry (POE) (i.e., Phoenix Sky Harbor INTL - Airport POE), the fugitive will be booked into the local county jail at the first POE city (i.e., Houston, Los Angeles). *Maricopa County Sheriff's Office (MCSO) will need to coordinate the domestic extradition from the local county jail to MCSO Jail.*

Transferring Custody of the Fugitive to Local Law Enforcement Agents:

Once in Phoenix, the USMS or FBI will turn over custody of the fugitive to the local law enforcement agency at the Phoenix Sky Harbor tarmac so that the local agency can transport the fugitive to county jail for booking.

The FBI or USMS will pay the entire cost of the fugitive's ***foreign extradition.***